

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED

January 10, 2012

In the Matter of L. BELL, Minor.

No. 303161

Livingston Circuit Court

Family Division

LC No. 10-013540-NA

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In the Matter of M. WITHERELL, Minor.

No. 304816

Livingston Circuit Court

Family Division

LC No. 10-13540- NA<sup>1</sup>

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Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals as of right from an order of disposition concerning her minor child, L. Bell, and from an order following preliminary hearing concerning her minor child, M. Witherell, in child protective proceedings concerning the two children. This Court granted respondent's motion for immediate consideration but denied her motion for a stay pending appeal. We affirm.

Respondent presents four issues on appeal. First, respondent asserts that the trial court erred in ordering her to undergo a psychological examination after the court acquired jurisdiction over L. Bell because there was no evidence suggesting that respondent had any sort of undiagnosed or untreated mental illness that affected her ability to parent. Respondent argues that the applicable statutes and court rules are ambiguous, conflicting, and lack meaningful standards. Second, in the case involving M. Witherell, respondent claims that her procedural due process rights were violated when the trial court refused to adjourn the preliminary hearing to secure necessary witness testimony to resolve a factual dispute regarding respondent's

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<sup>1</sup> The case involving respondent's younger child, M. Witherell, originated in Wayne Circuit Court as LC No. 11-501421 but was transferred to Livingston Circuit Court.

noncompliance with her case service plan in another county. Third, respondent argues that the trial court erred in authorizing the petition regarding M. Witherell, particularly in its application of the doctrine of anticipatory neglect. Finally, respondent contends that the trial court erred in removing respondent from her home, contrary to MCR 3.965(C) and MCL 712A.13A(4).

## I. PSYCHOLOGICAL EVALUATION

In child protective proceedings, the court has the discretion to enter orders of disposition that are appropriate for the welfare of the child. These orders are thus reviewed for an abuse of discretion. MCR 3.973(F); *In re Ricks*, 167 Mich App 285, 295; 421 NW2d 667 (1988). “[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.” *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). “When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court’s judgment.” *Id.*

The trial court did not abuse its discretion in ordering respondent to undergo a psychological evaluation as part of her case services plan. The applicable statutes are clear and unambiguous that a court may order a parent to submit to a psychological evaluation that the court finds will benefit the child. The trial court’s ability to enter orders affecting adults in child protective proceedings is ancillary to the court’s jurisdiction over a child. The trial court may exercise personal jurisdiction over a child if the allegations against a parent fall within the statutory bases for jurisdiction in MCL 712A.2(b)(1) to (4) and are proven at a trial or by the respondent’s plea. *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993); MCR 3.903(A)(27); MCL 712A.18(1). Jurisdiction over a child may be exercised only after the court makes a determination regarding the specific facts of a case. *In re AMB*, 248 Mich App 144, 166; 640 NW2d 262 (2001). Additionally, jurisdiction over the child, “personal jurisdiction,” may be established only after parties have received proper notice and the finder of fact determines that the child comes within the court’s jurisdiction under MCL 712A.2(b). MCL 712A.18(1); MCR 3.972(E).

In this case, respondent pleaded responsible to factual allegations in a second amended petition offered in support of the statutory grounds, which included failure to provide even minimum financial support, lack of appropriate housing, failure to maintain the child parent bond, pending criminal charges for multiple felony larcenies that occurred after the original petition was filed and a warrant for a substance abuse charge, and inability to provide appropriate care and custody because she was currently incarcerated. In light of respondent’s plea and the CPS investigator’s testimony, the trial court determined, by a preponderance of the evidence, that there were statutory grounds to exercise jurisdiction over the child under MCL 712A.2(b)(1) and (2). The trial court properly exercised personal jurisdiction over respondent’s child. The petition allegations fell within the statutory bases of the Juvenile Code and were proven by respondent’s plea and the CPS investigator’s testimony.

It is well recognized that once a child is removed from a parent’s custody and care, petitioner is obligated to make reasonable efforts to reunite the family. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); MCL 712A.18f; MCL 712A.19(7); see also MCL 712A.19b(5). Courts are granted broad discretionary power to carry out this statutory mandate.

Trial courts, under MCL 712A.6, have jurisdiction over adults to make orders affecting adults that, in the opinion of the court, are necessary for the physical, mental, or moral well-being of a particular child under its jurisdiction. The court may compel adults to participate in services necessary for the child's welfare as proscribed in an initial service plan. MCR 3.973(F)(2). Specifically, the "[t]he court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist." MCR 3.923(B).

Given the proper exercise of jurisdiction over the child, the trial court had the authority and discretion to order respondent to submit to the psychological evaluation as part of the statutorily mandated effort to reunite the family. The trial court reasonably concluded that a psychological examination was necessary to gain a deeper understanding of the family background and possible root causes of respondent's instability and substance abuse. A psychological examination is a well-known diagnostic tool to identify specific problems and thus would facilitate developing treatment goals to remedy the particular conditions that led to L. Bell's removal from respondent's care. There was credible evidence in the social file considered by the trial court that respondent had moved with L. Bell approximately five times in the first eight months of the child's life and would frequently leave the child in the care of others while she pursued drug use. Respondent's contention that there was not an adequate factual basis for the trial court's decision ignores the trial court record. The trial court's decision to order the psychological evaluation was well grounded in fact and reasoning and thus within the range of principled outcomes. Accordingly, the trial did not abuse its discretion in ordering respondent to submit to a psychological examination.

Respondent argues that the relevant statutes and court rules are either conflicting or are so broad that they are meaningless. Respondent asserts that the statutory language in MCL 712A.18f is inconsistent, sometimes offering guidance in its application and at other times offering no standard whatsoever to guide in its application. Moreover, respondent continues, MCL 712A.18f also conflicts with MCR 3.973(F)(2), MCL 712A.6, and with the more specific and focused language of MCL 712A.18f(4) and, thus, is ambiguous. We disagree. MCL 712A.18f(1) and (4) require trial courts initially and in later dispositional phases of a child protective proceeding to inquire into and make findings of whether efforts were made to rectify the conditions that led to the child's removal. The trial court is to consider the case service plan when reviewing reunification efforts made during dispositional hearings. MCR 3.973(F) similarly requires the trial court to review and determine whether reasonable reunification efforts have been made at dispositional reviews. MCL 712A.6 grants the trial court the authority to order adults to engage in reasonable efforts in a child protective proceeding. There are no conflicts or ambiguities in the language of the statutes or the court rules cited by respondent. Because the meaning of the statute and court rules is clear, judicial construction is unnecessary and not permitted. *People v Breidenbach*, 489 Mich 1, 8; 798 NW2d 738 (2011).

Respondent also asserts that MCR 3.923(B) provides no further guidance regarding when a trial court should or should not order such an evaluation and thus the court rule is meaningless and overbroad. This argument is meritless. The court rules provide the trial courts with specific procedural guidelines to carry out the intent of the Juvenile Code. Court rules properly govern "how" an action is brought, whereas statutes properly govern "what" action may be brought. *Krajewski v Krajewski*, 125 Mich App 407, 414; 335 NW2d 923 (1983), rev'd on other grounds

420 Mich 729; 362 NW2d 230 (1984). Thus, contrary to respondent's argument, the statutes and court rules are compatible and provide meaningful standards to prevent judicial overreaching.

Respondent further argues that the trial court overreached in ordering respondent to submit to a psychological examination, citing *In re Draper*, 150 Mich App 789; 389 NW2d 179 (1986); *In re Mason*, 140 Mich App 734; 364 NW2d 301 (1985); and *In re Moore*, 134 Mich App 586; 351 NW2d 615 (1984). The *Moore* decision, as succinctly described by respondent, reinforces the basic idea that the terms of a case service plan are important and should be tailored to each individual. In the present case the trial court ordered the psychological examination as part of respondent's case service plan because there were indicators in terms of respondent's instability, substance abuse, criminality, and lack of engagement in parenting her child that respondent may be suffering from an underlying mental health condition. The psychological examination was ordered so that a case service plan could be specifically tailored to reunite this particular parent with her child. Further, respondent's assertion of the dangers of a psychological evaluation, relying heavily on *Moore*, misses the mark. This Court, in *Moore*, addressed the issue of how much weight should be given to a psychological evaluation at a termination hearing and thus is inapplicable to the present issue of an evaluation ordered at a dispositional hearing.

Respondent further contends that a psychological examination must directly remedy one or more factual allegations in the petition. Absent these allegations, respondent claims, there could be no sufficient factual or legal basis for the requiring a psychological examination and the applicable statutes and court rules were not properly applied to her. This argument misconstrues the purpose of a child protective proceeding petition and the jurisdictional process. In a child protective proceeding, a petition is "a complaint or other written allegation, verified in the manner provided in MCR 2.114(B) that a parent . . . has harmed or failed to properly care for a child . . . ." MCR 3.903(A)(20). A petition has a two-fold purpose: to frame the issues for the court, setting forth the alleged basis of the court's subject matter jurisdiction over a particular child; and to provide notice of the allegations to a respondent so that he or she might evaluate their situation and prepare a response. See *In re Hatcher*, 443 Mich 426, 434 n 7; 505 NW2d 834 (1993). The description of the parents' acts of commission or omission should be put in terms specific enough to allow a defense to be prepared. *Id.*<sup>2</sup>

The petition here was legally sufficient. It clearly cited the statutory grounds under the Juvenile Code for the court's intervention and included essential facts to support these statutory grounds: respondent's financial and housing instability, substance abuse, criminal history, lack of proper guardianship, and lack of regular contact with her child. A petition is not required to articulate all possible underlying causes (such as mental health disorders) of the conditions (instability, drug abuse, etc.) that led to the child's removal. The trial court properly considered the amended petition's allegations, made a factual finding on the allegations based on evidence

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<sup>2</sup> Under MCR 3.961(B) a petition must contain, "[t]he essential facts that constitute an offense against the child under the Juvenile Code," cite to the section of the Juvenile Code relied on for jurisdiction, and state the type of relief requested.

through respondent's plea and the CPS investigator's testimony, and exercised personal jurisdiction over the child.

Lastly, respondent argues that the trial court's orders should be based on allegations proven or pleaded to and not assumptions. Here, respondent does not challenge the court's general authority to order a psychological evaluation but the court's authority to order her to submit to a psychological evaluation in this particular case, based on these particular set of facts. Respondent's argument, properly framed, is that she was compelled to participate in services that were unrelated to reasonable reunification efforts. The petition sufficiently apprised respondent that her instability and substance abuse were cause for court intervention. It was well within the court's authority to require respondent to undergo a psychological evaluation to fully understand the sources of the instabilities and provide reasonable efforts to rectify the conditions that led to the child coming into care. Thus, there are no grounds for vacating this provision of the disposition order

## II. REQUEST FOR ADJOURNMENT

The petition was authorized at the preliminary hearing, held nine days after the child's birth and within 24 hours of the child's removal from respondent's care. The court exercised jurisdiction over the child under the doctrine of anticipatory neglect. Respondent argues that her procedural due process rights were violated when the court refused to grant an adjournment of the preliminary hearing so that she could secure additional witness testimony to rebut evidence offered in support of anticipatory neglect. Respondent's attorney objected to the trial court's denial of an adjournment, and obliquely raised the issue of procedural due process by stating he did not have an opportunity to adequately defend his client because there was not enough time to subpoena a witness. This Court reviews de novo preserved "constitutional questions and issues of statutory interpretation, as well as family division procedure under the court rules. . . ." *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). Whether a child protective proceeding complied with respondent's rights to procedural due process is a question of law that is reviewed de novo. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). A trial court is granted discretion under MCR 3.965(B)(10) regarding the granting of adjournments at preliminary hearings in child protective proceedings; thus, the trial court's adjournment decision is reviewed for an abuse of discretion. *Babcock*, 469 Mich at 269.

Child protective proceedings must adequately safeguard the needs of the child and the constitutional rights of the parents. Parents have a constitutionally protected "fundamental liberty interest . . . in the care, custody, and management" of their children. *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). Parents are entitled to procedural due process before they are denied this fundamental liberty interest by the state. *Santosky*, 455 US at 753; *In re Vasquez*, 199 Mich App 44, 46-47; 501 NW2d 231 (1993). The state must provide "parents with fundamentally fair procedures" in proceedings involving their fundamental parental rights. *Santosky*, 455 US at 754; *In re Rood*, 483 Mich at 91. At a minimum, procedural due process requires notice and an opportunity to be heard. *Id.* at 92. Here, respondent challenges only the fairness of the process *as applied* to her, not the fairness of the procedures mandated by the statutes and court rules.

In the present case, the preliminary hearing was conducted within the time mandated by MCL 712A.14(2) and MCR 3.965(A)(1). Respondent does not challenge the fairness of the time periods mandated by the statutes and court rules. Respondent was aware of her child's removal and of the pendency of proceedings against her. Respondent does not claim that she did not receive notice of the proceeding brought in Wayne Circuit Court. Respondent did not attend the preliminary hearing; however, she was represented by a court-appointed attorney and had an opportunity to present and rebut evidence relevant to the petition. At the preliminary hearing, respondent's attorney made no specific objections on the record to the service of summons or notice of hearing, and thus any notice defects are waived. MCR 3.920(H). Thus it cannot be said that the state failed to comply with required procedures that deprived her of minimal due process.

Moreover, the trial court's decision to not grant respondent's request for an adjournment of the preliminary hearing did not cast serious doubt on the integrity of the proceedings. There was no procedural due process violation. Further, this Court may examine whether respondent was sufficiently responsible for her own lack of participation as to excuse a due process violation. *In re Rood*, 483 Mich at 111-114. The crux of respondent's argument is that she was unable to rebut evidence offered by the Wayne County caseworker that respondent had not complied with her service plan in Livingston County. Respondent, had she attended the hearing, could have given rebuttal testimony that she had substantially complied with her service plan. Respondent was responsible for her own lack of participation in the preliminary hearing. She received adequate notice that proceedings were pending against her yet she failed to appear. Further, she was represented by a court-appointed attorney. Therefore, respondent bears responsibility for her failure to participate in the preliminary hearing, and it is unnecessary to address respondent's claims that further judicial review is warranted because an error is capable of repetition yet evades review.

In sum, we find that there was no violation of respondent's procedural due process rights and that the trial court did not abuse its discretion in denying respondent's attorney's request for an adjournment of the preliminary hearing on the petition concerning M. Witherell.

### III. ANTICIPATORY NEGLECT

Respondent asserts that the petition allegations were either untrue or insufficient to confer jurisdiction under MCL 712A.2. Thus, respondent's appeal challenges the trial court's findings of fact, which are reviewed for clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

At a preliminary hearing, "[t]he court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b)." MCR 3.965(B)(11). Probable cause may be established by respondent waiving a probable-cause determination. MCR 3.962(B)(3); MCL 712A.13a(2). Alternatively, the court may take testimony and make a record, on information and belief, that the allegations in the verified petition are true. It is well recognized that a trial court may authorize a petition under the doctrine of anticipatory neglect. The doctrine of anticipatory neglect recognizes that "how a parent treats one child is certainly probative of how that parent

may treat other children.” *In re Dittrick*, 80 Mich App 219, 222; 263 NW2d 37 (1977); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

In *In re Foster*, 285 Mich App 630, 631-632; 776 NW2d 415 (2009), the conditions that led to the temporary wardship of the respondents’ other children also led to the adjudication of the child in question. The trial court in *Foster* properly considered the respondents’ failure to substantially comply with their treatment plans for their older children when exercising jurisdiction over the younger child and terminating the respondents’ parental rights under the doctrine of anticipatory neglect. In *Dittrick*, 80 Mich App at 222, allegations of the neglect of the respondent’s first child, even when a determination had not yet been made, were relevant to a finding of neglect sufficient to allow the court to take jurisdiction over the respondent’s second child. Further, evidence admitted at one hearing in a child protective proceeding may be considered as evidence at all subsequent hearings. In *In re Slis*, 144 Mich App 678, 687; 375 NW2d 788 (1985), the trial court properly summarized the family’s history of involvement with community service agencies in its findings of facts and conclusions of law. Also, hearings in protective proceedings are to be considered “as a single continuous proceeding.” *In re Sharpe*, 68 Mich App 619, 625-626; 243 NW2d 696 (1976).

In this case, the trial court properly considered respondent’s treatment of her older child, L. Bell, which led to respondent losing temporary custody of that child in Livingston County, as probative of how respondent would likely treat the younger sibling, M. Witherell. The conditions that led to the L. Bell’s removal included respondent’s financial and housing instability, substance abuse, criminal history, and her failure to maintain regular contact with her child. The trial court reasonably considered that respondent neglected or refused to provide proper or necessary support and care of her older child, and thus her younger child was also threatened with a substantial risk of harm. Also, there was sufficient evidence presented that respondent’s instability and substance abuse were not remedied as evidenced by respondent’s noncompliance with her case service plan and her admission that she used heroin during her early pregnancy. Respondent was incarcerated in mid October 2010 and released at the end of April 2011. Approximately one month later, she gave birth to the second child. Clearly, respondent had not yet had an opportunity to fully engage in reunification services. Respondent attempts to make an issue of whether respondent’s noncompliance was because of her lack of effort or because petitioner had yet to make all necessary referrals in the short time since respondent’s release from jail. That issue is irrelevant because it is undisputed that respondent, regardless of intent or fault, had not yet benefited from services and remedied the conditions that led to her first child’s removal. Respondent even acknowledged, in a written communication to petitioner shortly before the petition was filed, that she “has been out of jail for just one month and has not yet had a meaningful opportunity to succeed at her service plan.” Therefore, it was reasonable for the trial court to conclude that M. Witherell was also at a substantial risk of harm if she remained in respondent’s care.

Respondent argues that the petition did not allege that the child was affected by respondent’s alleged drug use or any of the other events noted in the petition. Also, respondent contends that the allegations of respondent’s drug use during the early part of her pregnancy were insufficient to confer jurisdiction. Respondent claims that there was no evidence offered

suggesting the baby suffered any other harm that could be fairly traced to the alleged substance use. This argument is meritless. A trial court may consider a parent's substance abuse when determining whether to authorize a petition alleging child neglect. Actual harm to M. Witherell was alleged in this case in that she was allegedly exposed to heroin during respondent's pregnancy. Exposing a child in utero can be considered an indicator of harm to a child. *In re Baby X*, 97 Mich App 111, 116; 293 NW2d 736 (1980). Moreover, a parent's daily use of controlled substances in the child's home that results in improper supervision of the child may be "child neglect." *People v Wood*, 447 Mich 80, 86-87; 523 NW2d 427 (1994). Respondent's argument, that no harm was done to the child because respondent and child did not test positive for drugs at birth, is flawed. As aptly analogized by the GAL, when a child has been beaten but the bruising has faded, the court should consider that the beating happened. Similarly, the court should consider respondent's heroin use early in her pregnancy. Further, it was not unreasonable for the trial court to question whether respondent had achieved and could maintain a heroin-free lifestyle, particularly since her negative drug test could have been attributable to respondent's six-month incarceration.

Respondent's argument that *In re Baby X* is inapplicable because M. Witherell, unlike *Baby X*, did not experience drug withdrawal after her birth, is unconvincing. This Court, in *Baby X*, found that a child has a legal right to begin life with a sound mind and body, and therefore it is in the child's best interests to examine all prenatal conduct bearing on that right. Further, this Court noted that, unlike a permanent custody order, a temporary custody order or order establishing jurisdiction may be based on a finding of temporary neglect. *Baby X*, 97 Mich App at 115-116. Here, the quantum of neglect by respondent's use of heroin early in her pregnancy, coupled with other proof, formed a sufficient finding of anticipatory neglect.

Respondent's argument that respondent's alleged drug use was also the basis for conferring jurisdiction misconstrues the court record. The trial court's finding of anticipatory neglect was not based solely on respondent's substance abuse issue. The court also considered offered proofs that respondent had not complied with other aspects of her case service plan in the Livingston County pending proceedings. There was probable cause that respondent lacked suitable housing, appropriate parenting skills (in that she had yet to start parenting classes), and financial stability. Additionally, respondent's argument that her two children are in very different circumstances and thus the doctrine of anticipatory neglect is inapplicable is unpersuasive. Both children were in similar circumstances. L. Bell was less than two years old and M. Witherell was a newborn. They both need consistency and support that respondent had not been able to provide. Reviewing the record as a whole, giving deference to the trial court's special opportunity to judge the credibility of the caseworker, there was no clear error in authorizing the petition.

#### IV. RESPONDENT'S RESIDENCE IN THE FOSTER HOME

The trial court ordered that respondent could not reside with the child in the child's foster caregiver's home. Respondent did not argue to the trial court that this would be tantamount to removing respondent from her home and thus the court had to comply with statutory criteria of MCL 712A.13A(4). Moreover, respondent waived this claim when respondent, after the court ruled that she could not reside with her child, suggested that the person with whom respondent



was staying would be a suitable foster care giver. Therefore, we review this issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

We find no plain error in the trial court's order. The trial court may determine whether a child is to remain in or be removed from a parent's care after authorizing a petition. MCR 3.965(B)(11) states that, at the preliminary hearing, "the court must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial." At the time of the preliminary hearing, M. Witherell and respondent were staying with the baby's paternal grandmother. In removing the baby from respondent's care, the trial court clearly stated that petitioner had the authority to investigate and determine the child's foster care placement and that the court declined to designate the paternal grandmother as the foster care provider. Therefore, respondent's assertion that the trial court ordered respondent to be removed from her putative home misconstrues the trial court record.

Also, respondent unsuccessfully argues that the trial court misapplied MCR 3.965(C)(1), (2), and (3), which provide that, before adjudication, the court must hear evidence regarding whether continuing a child's residence is "contrary to the welfare of the child," and if so must "order the child placed in the most family-like setting available consistent with the child's needs." The court rule further requires that, if the court orders placement, the court shall make a statement of its findings and the reason for its findings in writing or on the record.

In this case, the trial court received evidence that it was contrary to M. Witherell's welfare to continue to reside with respondent, and the court did not clearly err in ordering that the child be placed in the most family-like setting available consistent with the child's needs. The child was at risk because respondent had yet to establish, much less maintain, a stable and drug-free lifestyle. The trial court did not clearly err in its determination under MCR 3.965(C)(1), (2), and (3).

Lastly, respondent argues that the trial court erred in not complying with MCL 712A.13A(4) in ordering that respondent could not reside with M. Witherell. The child was placed with her paternal grandmother with whom respondent was staying at the time the order was entered. This, respondent contends, effectively was an order removing respondent from her home, and thus the trial court had to follow the statutory criteria of MCL 712A.13a(4). MCL 712A.13a(4) authorizes the trial court to order a parent residing in a child's home to leave the home in instances of alleged abuse if the presence of the parent in the home presents a substantial risk of harm to the child's life, physical health, or mental well-being. Respondent concludes that, because there were no findings of alleged abuse, the court violated MCL 712A.13A(4) and improperly removed respondent from the home.

However, although the child had been in respondent's care, respondent did not have a home. Lack of housing was one of the conditions that led to removal of respondent's other child. Arguably, respondent was a guest, not a resident, in the grandmother's home in Wayne County. Respondent stayed there for a relatively short time after her release from jail and her address, according to the Michigan Secretary of State, was in Livingston County. The grandmother told the court that respondent had other places to stay close to the grandmother's home. After the trial court ruled that M. Witherell was to be removed from respondent's care, respondent did not

assert that an order forbidding respondent to reside in the foster caregiver's home with the child was tantamount to ordering respondent to leave her home. Moreover, after the court ruling, respondent's attorney asked the trial court to consider the grandmother as a suitable relative for foster care placement. Thus, respondent waived this claim that the trial court erred in not complying with MCL 712A.13A(4). Additionally, the trial court granted respondent liberal supervised visitation during the day and effectively prohibited respondent only from staying the night with her child. The trial court's order struck a balance of providing M. Witherell with a stable environment while at the same time facilitating bonding between respondent and her newborn until such time respondent began to benefit from court ordered services. Therefore, the trial court's order was fundamentally fair and did not cast serious doubt on the integrity of the proceedings. No plain error occurred.

Affirmed.

/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald  
/s/ Patrick M. Meter